AMNESTY INTERNATIONAL

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Amnesty International's position paper on the European Commission's communication *A Renewed EU Strategy 2011-2014 for Corporate Social Responsibility*

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Amnesty International (AI) welcomes the opportunity to provide input to the European Parliament's resolution on the European Commission's Communication *A renewed EU strategy 2011-2014 for Corporate Social Responsibility* (the Communication). The resolution offers an excellent opportunity to foster an open debate between stake-holders on corporate social responsibility (CSR) and the role the EU could and should play in responding to the challenges it presents. We encourage the rapporteur and all those who engage in the process, to take the following views and recommendations into consideration throughout the process that will lead to political agreement on the Communication and help set priorities for future EU action on CSR.

General Comments

AI welcomes the renunciation of a purely voluntary approach towards CSR, in recognition of the need to control the negative impact business operations may have on human rights. As business can have both a positive and a negative impact on society, a CSR strategy must address both (i.e. fostering positive impact and preventing negative impact) and provide for mandatory instruments, where necessary, to protect human rights.

We also welcome recognition in the Communication of the need to ensure businesses respect human rights, and the commitment to implement the *UN Guiding Principles on Business & Human Rights* (UNGP). However, the Strategy remains vague about how this implementation will take place and where priorities will be set. Particularly, it fails to spell out specific steps to address the states' **duty to protect** human rights against abuse by business (pillar 1 of the UN 'Protect, Respect and Remedy' Framework for Business & Human Rights, also referred to as the 'Ruggie framework') and ensure **access to remedies**

where harm has occurred (pillar 3 of the 'Ruggie Framework'). The Strategy should express a stronger and unambiguous commitment by the EU to discharging such duties and taking a leadership role in this regard.

Duty to Protect

As a first step, the EU and its member states should carry out a comprehensive review and assessment of the normative framework at both EU and member state level, to identify and suggest reforms, as needed, in areas of law such as commercial, corporate, administrative, criminal and civil law relevant for effective protection of human rights in the context of business activity. On the basis of this exercise, the European Commission (Commission) should present a road-map for implementation in areas which fall within EU competence, giving priority to the states' duty to protect human rights against abuse by business (pillar 1) and access to remedy (pillar 3). For areas falling within EU member states' competence, the Commission should offer guidance and coordination to ensure effective implementation and a level playing-field for EU businesses.

Assessments of potential negative impacts on human rights should also be carried out with regard to new laws or the implementation of new policies and programmes related to business operations to ensure they do not lead to human rights abuse. Human rights impact assessments should also be run before concluding and when reviewing trade and investment agreements, whether bilateral or multilateral, as required by the 11th objective of the *EU Strategic Framework & Action Plan on Human Rights & Democracy 2012-2014*.[1]

The EU and its member states must enact specific measures to regulate companies to ensure they respect human rights within their territory and when operating abroad. Effective regulatory measures put in place by the EU and member states can take various forms. One important measure is to legally require businesses to respect human rights and undertake **human rights due diligence** throughout their global operations to mitigate human rights risks and prevent adverse human rights impacts.

Due diligence is a continuing process involving active and positive measures to identify, prevent and address actual or potential risks that corporate activities and operations may pose to human rights. Adequate due diligence includes adopting a policy commitment to respect human rights, having adequate human rights policies integrated, implemented and monitored throughout the company, assessing potential impacts of the company's activities on human rights and developing action plans to prevent and address human rights abuse. Consultation with affected individuals and communities is also required, as well as transparency in the process and the disclosure of relevant information.

Through regulation, the EU and its member states should clarify what is required to carry out adequate human rights due diligence. They should make clear that human rights due diligence is not about managing risks to the company's commercial interests, but to avoid external harm to individuals and communities, and that the main purpose and function of these processes is to prevent human rights abuses.

[1] EU Strategic Framework and Action Plan on Human Rights and Democracy (11855/12)
http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/131181.pdf

An immediate and important step towards due diligence would be for the EU to expand the scope of regulations related to **the disclosure of non-financial information by companies**, and require companies to disclose information about their policies, procedures and practices to identify and mitigate risks to human rights and prevent human rights abuses throughout their operations. Forthcoming legislation on disclosure of non-financial information by companies should therefore require mandatory reporting on human rights risks and impacts and respective due diligence procedures.

The EU and member states should actively monitor human rights due diligence processes and require disclosure of corporate human rights due diligence policies, procedures and practices so as to facilitate transparency and accountability. Sanctions and other corrective measures should be imposed if companies fail to take adequate steps to identify and mitigate risks to human rights and prevent human rights abuse.

EU member states should also ensure that **state-owned-enterprises and businesses receiving any form of state support** conduct human rights due diligence. States must ensure that they are not complicit in human rights abuse by companies, and should therefore not support business operations that cause or are likely to cause human rights abuse. As the very least, the EU and member states should ensure they do not provide support if adequate human rights due diligence policies and practices are not in place.

In this context, the Commission should ensure that the recently-introduced reporting requirements from member states to the Commission on compliance of their export credit agencies (ECAs) with human rights (regulation No 1233/2011)[2] include sufficient detail on how ECAs ensure that benefiting companies conduct adequate human rights due diligence processes. Member states should also report on how their ECAs ensure they do not support projects that abuse or are likely to abuse human rights and on their own due diligence processes to ensure this is the case. The EU should promote the establishment of a clear reporting requirement for ECAs' human rights impact at regional and international level, to establish a global level playing-field. The Commission has expressed its intention to review EU Company Law and has conducted consultations to this end. The Commission should use this review as an opportunity to eliminate obstacles to corporate accountability and remedy associated with how liability is allocated between members of corporate groups. The review provides an opportunity to ensure that the separate legal personality of parent companies and their subsidiaries is not an obstacle to effective accountability and remedy for human rights abuse EU companies ought to have striven to prevent. Human rights due diligence responsibilities regarding supply chains should also be clearly determined. In its CSR strategy, the Commission has invited businesses to conduct due diligence on their supply chains. As part of their duty to protect, the EU and its member states should however provide for mandatory minimum standards.

Access to Remedy

- ***Enforce more effectively existing laws to hold corporate actors to account***

There is an urgent need to address the legal enforcement gaps when it comes to holding companies to account for illegal conduct under existing laws. Even where laws exist, corporate actors are not being held

[2] Regulation (EU) No 1233/2011 on the application of certain guidelines in the field of officially supported export credits and repealing Council Decisions 2001/76/EC and 2001/77/EC
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:326:0045:0112:EN:PDF

to account for committing acts that lead to human rights abuses abroad. One illustration is provided by the findings of the UN Special Rapporteur on the human rights implications of environmentally sound management and disposal of hazardous substances and wastes with respect to the movement of toxic waste from the EU to Cote D'Ivoire[3].

The EU and its member states should more effectively enforce existing laws to hold companies to account for illegal acts that lead to human rights abuses. The EU should also explore gaps in accountability in the different domestic legal regimes of the member states regarding corporations, either guiding member states in bridging these gaps or harmonising regimes to ensure consistent human rights protection is guaranteed. Harmonisation should not lead to the lowest common denominator but the highest possible protection according to international law.

Furthermore, when a breach of EU law occurs, appropriate steps to ensure compliance should be taken and, where necessary, sanctions enforced.

- ***Improve access to justice for victims of corporate abuse, particularly regarding judicial and non-judicial state-based mechanisms in home states***

Corporate entities are currently able to operate across state borders with ease, while state borders simultaneously present institutional, political, practical and legal barriers to corporate accountability and redress for victims of corporate human rights abuse. People whose human rights are affected by corporate activities often face major hurdles in trying to access an effective remedy. The problem is particularly acute for rights-holders who suffer abuse caused or contributed to by businesses incorporated abroad and attempt to seek justice in the companies' home states.

Under international human rights law, people whose rights are violated are entitled to an effective remedy. The EU and its member states must ensure victims of corporate human rights abuse can exercise their right to remedy effectively and should do so by focusing on **improving and facilitating access to state-based judicial and non-judicial remedies in their home territory**. As part of this process, the EU should **identify existing obstacles to remedy within the EU**, including difficulties in accessing EU courts, **and remove or alleviate these obstacles,** and where necessary, give guidance to member states on how to address them.

As a first step the Commission should address the procedural obstacles in accessing redress in the European legal system highlighted in the Edinburgh Study (ordered by the Commission)[4], such as obstacles resulting from time limitations, legal aid and due process, non-availability of public interest litigation and mass tort claims, and provisions on evidence. Besides these, the Commission should also examine the challenges presented by the complexity of corporate structures and how these are often used to evade accountability (e.g. the separate legal personality of different entities within a corporate group, as expressed above) and barriers to access information that is relevant for the effective protection of rights and access to remedy.

[3] Addendum to report of the Special Rapporteur on the adverse effects of the movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights, 3 September 2009 (UN Doc. A/HRC/12/26/Add.2). For more information on the case see also Amnesty International's report Toxic Truth http://amnesty.org/en/library/asset/AFR31/002/2012/en/7336d72a-6b14-453a-bc1e-afd1e1117bde/afr310022012eng.pdf

[4] Study of the legal framework on Human Rights and the environment applicable to European enterprises operating outside the European Union http://ec.europa.eu/enterprise/policies/sustainable-business/files/business-human-rights/101025_ec_study_final_report_en.pdf

State-based non-judicial remedies play an important complementary role in establishing accountability and access to remedy. The EU and its member states should devote greater attention and resources to strengthening competent state-based administrative and other non-judicial bodies capable of providing effective remedy for rights abuses. These can be supplemented, but not replaced by corporate-level grievance mechanisms.

As part of its action plan implementing the Stockholm Programme, the Commission has committed itself to improving "the consistency of existing Union legislation in the field of civil procedural law" and to set common minimum procedural standards for civil proceedings.[5] The Commission should use this opportunity to address the above listed obstacles and further explore existing gaps between member states' different domestic legal regimes, either guiding member states in bridging these gaps or harmonising regimes to ensure consistent human rights protection is guaranteed. Again, harmonisation should not lead to the lowest common denominator but the highest possible protection according to international law.

In the context of the forthcoming review of the **Rome II regulation**, the EU should also ensure that when member states courts decide on the applicable law, they refuse to apply foreign laws where such application would lead to manifest breaches of human rights or denial of effective remedy for human rights abuses.

The EU should furthermore strengthen mechanisms for **collective redress** as an important tool for access to justice and ensure their applicability in cases of alleged human rights abuse resulting from business operations abroad.

The Commission should also give guidance to member states in setting up new, or strengthening existing, state-based non-judicial grievance systems such as national human rights bodies, ombudspersons and other administrative or quasi-judicial bodies, to provide further avenues for redress to victims of human rights abuse by companies.

[5] COM(2010) 171 final http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0171:FIN:EN:PDF